**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**APPEAL FROM ORDER No. 384 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**YOGESH MOHAN TIWARI - Appellant(s)**
**Versus**
**MAHENDRA SANGHVI & 4 - Respondent(s)**

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**Appearance :**
SINGHI & CO for Appellant(s) : 1,
MS SEJAL K MANDAVIA for Respondent(s) : 1 - 4.
MR AS VAKIL for Respondent(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

**Date : 27/02/2007**

**ORAL JUDGMENT**

1. The appellant herein is the original defendant No.2 against whom as well as against respondent No.5 herein – respondents Nos. 1 to 4 have filed a suit being Civil Suit No. 4727 of 1997. The aforesaid suit is filed by the

plaintiffs for permanent injunction.

2. It is the case of the plaintiffs that the plaintiffs are the owners of 1000 Shares of the defendant No.1 Company, i.e. M/s.Satyam Computers Ltd. and that that the original Share Certificates which were kept in the brief-case had been stolen away from their office on 29.1.1996. According to the plaintiffs, they had also filed a criminal complaint with the concerned police station on 30.1.1996 and intimation was also given to the defendant No.1 Company in this behalf with a request not to enter into transaction with regard to the said Shares. On the aforesaid facts in the suit, an application for interim injunction was filed and a show cause notice was also issued to the defendant No.1 Company.

2.1 The defendant No.1 Company filed its reply at Exh.45, inter alia stating that one M/s. Hindustan Sales Agency representing defendant No.2 had sent the said Shares of its Company for transferring them in favour of defendant No.2. Defendant No.2 is joined in the suit subsequently. It is the case of defendant No.1 that on the scrutiny of the said transfer Form of the said Shares, defendant No.1 Company found that the signatures of plaintiffs Nos.1 and 2 did not tally with their

specimen signatures available in the official record of the Company. The said suit is also resisted by defendant No.2 on various grounds.

2.2 It is the case of the appellant who is defendant No.2 to the suit that he is residing at Delhi and he had purchased the said Shares on 3.1.1996 through Share Broker Mr.Nagarmal Shroff for which, the said defendant had relied upon the documentary evidence produced with Exh.59, to substantiate his say that he has purchased the said Shares through Broker. Defendant No.2 also contended that the Civil Court has no jurisdiction to decide the suit. In the aforesaid suit, the original plaintiffs submitted an application for interim injunction at Exhs.5 and 6 restraining the defendants from transferring the said Shares.

2.3 The learned trial Judge, after hearing the concerned parties, allowed the said interim injunction application and the defendants were restrained by interim injunction for transferring the aforesaid 1000 shares of the defendant No.1 Company. The aforesaid order is challenged by defendant No.2 by way of preferring this Appeal From Order under Order 43 of the Code of Civil Procedure.

2.4 Learned Advocate Mr.Shukla appearing for the appellant submitted that the appellant is a bonafide purchaser of the aforesaid Shares from the Broker and therefore, the injunction granted by the trial Court is required to be vacated.

2.5 Learned advocate Ms.Mandavia appearing for respondents Nos.1 to 4, on the other hand, submitted that the Share Certificates were stolen from the office of the plaintiffs and that the trial Court has given proper reasons while granting interim injunction and the said order is not required to be interfered with by this Court in this Appeal From Order.

2.6 Learned advocate Mr.A.S.Vakil, who is appearing for respondent No.5-Company submitted that unless the whole suit is decided, it would not be just and proper to allow transfer of the Shares unless a positive finding is available in the suit in connection with the point in issue.

3. I have heard learned advocates. In my view the discretionary order passed by the trial Court is not required to be interfered with by this Court in this

Appeal From Order, unless the suit is finally decided at this stage, the Court cannot come to a positive conclusion one way or other. Whether defendant No.2 is a bonafide purchaser or not or whether the Shares in question were subjected to theft or not are the questions which are to be decided in the suit after appreciating the evidence on record which may be led by the parties before the trial Court.

4. Considering the aforesaid aspect of the matter, and considering the fact that the suit is pending practically for more than ten years, it would be just and proper to give appropriate direction to dispose of the suit expeditiously by maintaining the injunction granted by the trial Court. In that view of the matter, the order of the trial Court passed below Notice of Motion is confirmed during the pendency of the suit. However, in the facts and circumstances of the case, the trial Court is directed to dispose of the suit expeditiously and latest by 20th Oct.2007. At the time of deciding the suit, the observations made by the trial Court in Exh.5 order may not be taken into consideration and the same be treated only as a tentative indenture and the suit will have to be decided on its own merits and as per the evidence which may be adduced by the parties at the

trial. Therefore, I see no reason to interfere with the impugned order in this Appeal From Order. The appeal is accordingly disposed of subject to the direction for disposal of the suit expeditiously. There shall be no order as to costs.

Learned advocates have assured the Court that their clients will co-operate with the early hearing of the suit.

Writ to be sent to the trial Court forthwith.

(P.B.Majmudar, J.)

Sreeram.